

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION



KENNETH R. FLAUM, Individually,

Plaintiff,

vs.

WAFFLE HOUSE, INC., a Georgia
corporation,

Defendant.

Case No. 4:13 cv 156

COMPLAINT

Plaintiff, KENNETH R. FLAUM, Individually, on his behalf and on behalf of all other mobility impaired individuals similarly situated, (sometimes referred to as "Plaintiff"), hereby sues the Defendant WAFFLE HOUSE, INC., a Georgia corporation (sometimes referred to as "Defendant" or "Waffle House", for Injunctive Relief, attorney's fees, litigation expenses, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. ("ADA"), and damages pursuant to Virginia law and states as follows:

JURISDICTION AND PARTIES

1. Plaintiff, Kenneth R. Flaum, is an individual residing in Gloucester, VA, in the County of Gloucester.
2. Defendant owns, leases, leases to or operates places of public accommodation as defined by the ADA and the regulations implementing the ADA, 28 CFR 36.201(a) and 36.104. Defendant is responsible for complying with the obligations of the ADA. The places of public accommodation in Virginia that the Defendant owns, operates, leases, or leases to, are known as Waffle House, located at:

- a. **Waffle House #62**
2600 W. Mercury Blvd.
Hampton, VA
- b. **Waffle House #964**
980 J. Clyde Morris Blvd.
Newport News, VA
- c. **Waffle House #987**
12259 Hornsby Lane
Newport News, VA
- d. **Waffle House #1115**
1811 W. Mercury Blvd.
Hampton, VA

and throughout the State of Virginia at the following locations:

Waffle House #1241
808 ENGLAND ST
ASHLAND, VA 23005-2231

Waffle House #1362
2002 BOULEVARD
COLONIAL HEIGHTS, VA 23834-2310

Waffle House #1959
610 NORTH MAIN ST.
BLACKSBURG, VA 24060

Waffle House #833
4614 CLEBURNE BLVD
DUBLIN, VA 24084-4411

Waffle House #1325
495 PREMIER CIRCLE
CHARLOTTESVILLE, VA 22901-1724

Waffle House #1041
17137 DUMFRIES RD
DUMFRIES, VA 22025-1930

Waffle House #1244
1162 5TH ST SW
CHARLOTTESVILLE, VA 22902-6470

Waffle House #1011
580 WARRENTON ROAD
FREDERICKSBURG, VA 22406-1027

Waffle House #1938
4800 Portsmouth Blvd
Chesapeake, VA 23321

Waffle House #930
5328 JEFF DAVIS HWY
FREDERICKSBURG, VA 22408-2608

Waffle House #1363
3251 WESTERN BRANCH
CHESAPEAKE, VA 23321-5230

Waffle House #1209
8400 BROOK RD
GLEN ALLEN, VA 23060-4016

Waffle House #1922
11201 IRONBRIDGE RD

Waffle House #589
1675 E MARKET ST

CHESTER, VA 23831

Waffle House #1963
90 OAK TREE BLVD
CHRISTIANSBURG, VA 24073

Waffle House #357
2440 ROANOKE ST
CHRISTIANSBURG, VA 24073-2604

Waffle House #1463
7400 SANDY LN
MECHANICSVILLE, VA 23111-3534

Waffle House #1246
3500 SPEEKS DR
MIDLOTHIAN, VA 23112-7320

Waffle House #1992
5751 E. VIRGINIA BEACH BLVD
NORFOLK, VA 23502

Waffle House #1032
5631 BOYDTON PLANK
PETERSBURG, VA 23803-8945

Waffle House #1989
1309 WEST BROAD ST.
RICHMOND, VA 23220

Waffle House #332
7311 HULL ST RD
RICHMOND, VA 23235-5805

Waffle House #350
7109 W BROAD ST
RICHMOND, VA 23294-3703

Waffle House #436
2101 WILLIS RD
RICHMOND, VA 23237-2903

Waffle House #1190
5102 WILLIAMSBURG RD

HARRISONBURG, VA 22801-5117

Waffle House #846
5105 PLAZA DRIVE
HOPEWELL, VA 23860-7324

Waffle House #1322
8 MAURY RIVER RD
LEXINGTON, VA 24450-3378

Waffle House #76
5224 FORT AVENUE
LYNCHBURG, VA 24502-1610

Waffle House #1148
P.O. BOX 455
RUTHER GLEN, VA 22546

Waffle House #1562
5414 WILLIAMSBURG RD
SANDSTON, VA 23150-1222

Waffle House #602
1244 RICHMOND AVE
STAUNTON, VA 24401-4908

Waffle House #1278
114 FAIRFAX PIKE
STEPHENS CITY, VA 22655-2966

Waffle House #525
2609 LEE HWY RT 4
TROUTVILLE, VA 24175-6326

Waffle House #1245
5825 NORTHAMPTON BLV
VIRGINIA BEACH, VA 23455-4622

Waffle House #902
5656 INDIAN RIVER RD
VIRGINIA BEACH, VA 23464-5200

Waffle House #1734
901 LEW DEWITT BLVD

RICHMOND, VA 23231-2930

Waffle House #77
3606 FRANKLIN RD SW
ROANOKE, VA 24014-2204

Waffle House #627
6608 THIRLANE ROAD
ROANOKE, VA 24019-2906

Waffle House #530
1975 E. MAIN STREET
WYTHEVILLE, VA 24382-3453

WAYNESBORO, VA 22980-7477

Waffle House #1972
100 GETTY LANE
WINCHESTER, VA 22603

Waffle House #1199
1805 S PLEASANT
WINCHESTER, VA 22601-4496

3. Venue is properly located in the EASTERN District of VIRGINIA because venue lies in the judicial district of the properties situs. The Defendant's properties are located in and do business within this judicial district.

4. Pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, this Court has been given original jurisdiction over actions which arise from the Defendant's violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. See also 28 U.S.C. § 2201 and § 2202.

5. Plaintiff Kenneth R. Flaum is a Virginia resident, is sui juris, and qualifies as an individual with disabilities as defined by the ADA. Mr. Flaum has a service connected disability and has been evaluated at 100% disabled. Mr. Flaum has back fusions, has rheumatoid arthritis, and had two hip replacements, and uses the aid of a scooter for mobility. Mr. Flaum is permanently disabled due to his service connected disabilities, and he is substantially limited in performing one or more major life activities, including walking. Kenneth R. Flaum has visited some of the Waffle House properties which form the basis of this lawsuit and plans to return to the Waffle Houses in Virginia once they are made accessible, not only to avail himself of the goods and services offered to the public at these properties, but also to assure himself that these properties are in compliance with the ADA so that he and others similarly situated will have full and equal enjoyment of the properties

without fear of discrimination. The Plaintiff has encountered architectural barriers at the subject properties, which have limited his access to the Defendant's properties, and to the goods, services, facilities, privileges, and advantages offered at Defendant's properties, and have impaired his ability to park at Defendant's facilities, to reach the counters, to reach cashiers' stations to pay, and to use the restroom facilities. The ADA violations and barriers to access at the properties are more specifically set forth in this Complaint.

COUNT I

(VIOLATION OF TITLE III OF THE ADA)
(INJUNCTIVE RELIEF DEMANDED)

6. The allegations set forth in paragraphs 1-5 above are incorporated by reference as if fully set forth herein.

7. Defendant owns, leases, leases to, or operates places of public accommodation as defined by the ADA and the regulations implementing the ADA, 28 CFR 36.201(a) and 36.104. Defendants are responsible for complying with the obligations of the ADA. The places of public accommodation that the Defendant owns, operates, leases or leases to, are known as Waffle House, and are located as listed above, throughout the State of Virginia.

8. Kenneth R. Flaum has a realistic, credible, existing and continuing threat of discrimination from the Defendants' non-compliance with the ADA with respect to the properties as described but not necessarily limited to the allegations in paragraph 10 of this Complaint. Plaintiff has reasonable grounds to believe that he will continue to be subjected to discrimination in violation of the ADA by the Defendant. Kenneth R. Flaum desires to visit Waffle Houses in Virginia once they are made accessible, not only to avail himself of the goods and services offered to the public at these properties, but also to assure himself that these properties are in compliance with the ADA so that he and others similarly situated will have full and equal enjoyment of the properties without fear

of discrimination.

9. The Defendant has discriminated against the individual Plaintiff by denying him access to, and full and equal enjoyment of, the goods, services, facilities, privileges, advantages and/or accommodations of the Defendant's facilities, as prohibited by 42 U.S.C. § 12182 et seq.

10. The Defendants have discriminated, and are continuing to discriminate, against the Plaintiff in violation of the ADA by failing to, inter alia, have accessible facilities by January 26, 1992 (or January 26, 1993, if Defendants have 10 or fewer employees and gross receipts of \$500,000 or less). The preliminary inspection of the Waffle House at various locations has shown that the violations exist, and that many of the violations of the ADA and Code of Virginia resulted from common design plans implemented by Waffle House at its facilities. These violations personally encountered by Kenneth R. Flaum include, but are not limited to:

WAFFLE HOUSE #62

Parking and Accessible Routes

- A. The disabled use parking spaces that are provided at this facility are not located on the shortest accessible route to the accessible entrances as required in Section 208.3.1 of the 2010 ADA Standards for Accessible Design.
- B. The disabled use spaces and/or access aisles contain slopes or cross slopes in excess of 1:48 contrary to the requirements of Section 502.4 of the 2010 ADA Standards for Accessible Design.
- C. There are no disabled use parking spaces designated as "van accessible" violating Sections 208.2.4 and 502.6 of the 2010 ADA Standards for Accessible Design.
- D. There are curb ramps at the facility contain excessive slopes, side slopes or cross slopes in violation of Sections 405.2 and 405.3 of the 2010 ADA Standards for Accessible Design.
- E. There are doors at this facility that lack the maneuvering clearances required in Section 404.2.4 of the 2010 ADA Standards for Accessible Design.
- F. There is not a continuous path of travel connecting all essential elements of the facility, in violation of Sections 206.2.2 of the 2010 ADA Standards for Accessible Design.

Access to Goods and Services

- A. There are permanently designated interior and exterior spaces without the signage required in Sections 216 of the 2010 ADA Standards for Accessible Design.
- B. There are sales and service counters throughout the facility that do not comply with the requirements of Sections 227.3 and 904.4 of the 2010 ADA Standards for Accessible Design.
- C. The width of the knee clearances provided at the seating provided at this facility is less than the minimum allowed in Section 306.3.5 of the 2010 ADA Standards for Accessible design.

WAFFLE HOUSE #964

Parking and Accessible Routes

- A. The disabled use parking spaces that are provided at this facility are not located on the shortest accessible route to the accessible entrances as required in Section 208.3.1 of the 2010 ADA Standards for Accessible Design.
- B. The disabled use spaces and/or access aisles contain slopes or cross slopes in excess of 1:48 contrary to the requirements of Section 502.4 of the 2010 ADA Standards for Accessible Design.
- C. There are no signs designating the disabled use spaces, in violation of Section 502.6 of the 2010 ADA Standards for Accessible Design.
- D. There are no disabled use parking spaces designated as "van accessible" violating Sections 208.2.4 and 502.6 of the 2010 ADA Standards for Accessible Design.

Access to Goods and Services

- A. There are permanently designated interior and exterior spaces without the signage required in Sections 216 of the 2010 ADA Standards for Accessible Design.
- B. There are sales and service counters throughout the facility that do not comply with the requirements of Sections 227.3 and 904.4 of the 2010 ADA Standards for Accessible Design.
- C. The width of the knee clearances provided at the seating provided at this facility is less than the minimum allowed in Section 306.3.5 of the 2010 ADA Standards for Accessible design.

WAFFLE HOUSE # 987

Parking and Accessible Routes

- A. There are no signs designating the disabled use spaces, in violation of Section 502.6 of the 2010 ADA Standards for Accessible Design.
- B. There are no disabled use parking spaces designated as “van accessible” violating Sections 208.2.4 and 502.6 of the 2010 ADA Standards for Accessible Design.
- C. There are no accessible routes from the street, sidewalk and parking areas as required in Section 206.2.1 of the 2010 ADA Standards for Accessible Design.
- D. Some of the doors at the facility are fitted with inaccessible hardware, in violation of Section 404.2.7 of the 2010 ADA Standards for Accessible Design.
- E. The dimensions of the ramp landings that are provided do not comply with the requirements of Sections 405.7.2, 405.7.3, 405.7.4 and 405.7.5 of the 2010 ADA Standards for Accessible Design.
- F. There are curb ramps at the facility contain excessive slopes, side slopes or cross slopes in violation of Sections 405.2 and 405.3 of the 2010 ADA Standards for Accessible Design.
- G. There are curb ramps at the facility that project into vehicular lanes in violation of Section 406.5 of the 2010 ADA Standards for Accessible Design.
- H. There is not a continuous path of travel connecting all essential elements of the facility, in violation of Sections 206.2.2 of the 2010 ADA Standards for Accessible Design.

Access to Goods and Services

- A. There are permanently designated interior and exterior spaces without the signage required in Sections 216 of the 2010 ADA Standards for Accessible Design.
- B. There are sales and service counters throughout the facility that do not comply with the requirements of Sections 227.3 and 904.4 of the 2010 ADA Standards for Accessible Design.
- C. The width of the knee clearances provided at the seating provided at this facility is less than the minimum allowed in Section 306.3.5 of the 2010 ADA Standards for Accessible design.

WAFFLE HOUSE #1811

Parking and Accessible Routes

- A. There are no disabled use parking spaces designated as “van accessible” violating Sections 208.2.4 and 502.6 of the 2010 ADA Standards for Accessible Design.
- B. There are no accessible routes from the street, sidewalk and parking areas as required in Section 206.2.1 of the 2010 ADA Standards for Accessible Design.
- C. Some of the doors at the facility are fitted with inaccessible hardware, in violation of Section 404.2.7 of the 2010 ADA Standards for Accessible Design.
- D. The maneuvering clearance of some of the doors at the facility does not comply with the requirements of Section 404.2.1 of the 2010 ADA Standards for Accessible Design.
- E. The distance between some of the doors in series at the facility does not comply with the requirements of Section 404.2.6 of the 2010 ADA Standards for Accessible Design.
- F. There are curb ramps at the facility that project into vehicular lanes in violation of Section 406.5 of the 2010 ADA Standards for Accessible Design.
- G. There is not a continuous path of travel connecting all essential elements of the facility, in violation of Sections 206.2.2 of the 2010 ADA Standards for Accessible Design.

Access to Goods and Services

- A. There are permanently designated interior and exterior spaces without the signage required in Sections 216 of the 2010 ADA Standards for Accessible Design.
- B. There are sales and service counters throughout the facility that do not comply with the requirements of Sections 227.3 and 904.4 of the 2010 ADA Standards for Accessible Design.
- C. The width of the knee clearances provided at the seating provided at this facility is less than the minimum allowed in Section 306.3.5 of the 2010 ADA Standards for Accessible design.

Public Restrooms

- A. The location of the flush control on many of the public use W/Cs at the facility does not comply with the requirements of Section 604.6 of the 2010 ADA Standards for Accessible Design.
- B. The turning space that is provided in public restrooms does not comply with the

requirements of Section 304.3.1 or Section 304.3.2 of the 2010 ADA Standards for Accessible Design.

11. The discriminatory violations described in paragraph 10 are not an exclusive list of the Defendant's ADA violations. Plaintiff requires the inspection of the Defendant's places of public accommodation in order to photograph and measure all of the discriminatory acts violating the ADA and all of the barriers to access. The individual Plaintiff, and all other individuals similarly situated, have been denied access to, and have been denied the benefits of services, programs and activities of the Defendant's facilities, and have otherwise been discriminated against and damaged by the Defendants because of the Defendants' ADA violations, as set forth above. The individual Plaintiff, and all others similarly situated, will continue to suffer such discrimination, injury and damage without the immediate relief provided by the ADA as requested herein. In order to remedy this discriminatory situation, the Plaintiff requires an inspection of the Defendant's places of public accommodation in order to determine all of the areas of non-compliance with the Americans with Disabilities Act.

12. Defendant has discriminated against the individual by denying him access to full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of its places of public accommodation or commercial facilities in violation of 42 U.S.C. § 12181 et seq. and 28 CFR 36.302 et seq. Furthermore, the Defendant continues to discriminate against the Plaintiff, and all those similarly situated by failing to implement a plan or policy reasonably calculated to make all of its Waffle Houses in Virginia fully accessible to and independently usable by disabled persons such as Plaintiff Kenneth R. Flaum, and by failing to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities; and by failing to take such efforts that may be necessary to ensure that no individual with

a disability is excluded, denied services, segregated or otherwise treated differently than other individuals.

13. Plaintiff is without adequate remedy at law and is suffering irreparable harm. Considering the balance of hardships between the Plaintiff and Defendant, a remedy in equity is warranted. Furthermore, the public interest would not be disserved by a permanent injunction. Plaintiff has retained the undersigned counsel and is entitled to recover attorney's fees, costs and litigation expenses from the Defendant pursuant to 42 U.S.C. § 12205 and 28 CFR 36.505.

14. Defendant is required to remove the existing architectural barriers to the physically disabled when such removal is readily achievable for their places of public accommodation that have existed prior to January 26, 1992, 28 CFR 36.304(a); in the alternative, if there has been an alteration to Defendant's places of public accommodation since January 26, 1992, then the Defendant is required to ensure to the maximum extent feasible, that the altered portions of the facilities are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally, if the Defendant's facilities are that which were designed and constructed for first occupancy subsequent to January 26, 1993, as defined in 28 CFR 36.401, then the Defendant's facilities must be readily accessible to and useable by individuals with disabilities as defined by the ADA.

15. Notice to Defendant is not required as a result of the Defendant's failure to cure the violations by January 26, 1992 (or January 26, 1993, if Defendant has 10 or fewer employees and gross receipts of \$500,000 or less). All other conditions precedent have been met by Plaintiff or waived by the Defendant.

16. Pursuant to 42 U.S.C. § 12188, this Court is provided with authority to grant Plaintiff Injunctive Relief, including an order to require the Defendant to alter the Waffle House facilities to

make those facilities readily accessible and useable to the Plaintiff and all other persons with disabilities as defined by the ADA, or by closing the facilities until such time as the Defendant cures its violations of the ADA.

COUNT II

VIRGINIA STATE CLAIM (DAMAGES)

17. Plaintiff re-alleges and incorporates into this cause of action each and every allegation contained in the previous paragraphs numbered 1 through 16 of this Complaint.

18. Defendant's properties are places of public accommodation under Section 51.5-44 of the Code of Virginia.

19. The architectural barriers and other accessibility barriers institute an ongoing act of discrimination against the Plaintiff as a person with a disability in violation of Section 51.5-44 of the Code of Virginia.

20. As a direct and proximate result of Defendant's intentional and negligent failure to remove its barriers to access, Plaintiff has been denied access and his civil rights have been violated.

21. Consequently, the Plaintiff seeks monetary damages from the Defendant pursuant to Section 51.5-46 of Code of Virginia for the discrimination he has experienced and continues to experience.

WHEREFORE, Plaintiff respectfully requests:

a. The Court issue a Declaratory Judgment that determines that the Defendant at the commencement of the subject lawsuit is in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq.

b. Injunctive relief against the Defendant including an order to make all readily achievable alterations to the facilities; or to make such facilities readily accessible to and

usable by individuals with disabilities to the extent required by the ADA; and to require the Defendant to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities; and by failing to take such steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.

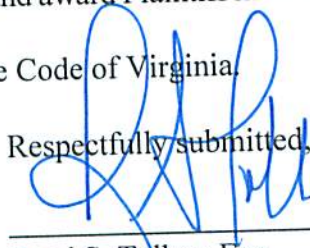
c. An award of attorney's fees, costs and litigation expenses pursuant to 42 U.S.C. § 12205, and such other relief as the Court deems necessary, just and proper.

d. The Court issue a Declaratory Judgment that the Defendant has violated The Virginians With Disabilities Act and award Plaintiff monetary damages from the Defendant pursuant to Section 51.5-46 of the Code of Virginia.

Date: _____

11/20/13

Respectfully submitted,



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